

2022 Rule of Law Program Part 2

Anniversary of *Plessy v. Ferguson* Decision

Civics Lesson Plan

Objective: To introduce New Mexico students to the legal system and legal theory through analyzing case law and discussion.

Grade Level: 9-12

Time: One class period (50 Minutes)

Before Class: Read this outline and review the accompanying *Additional Materials*.

Case Summary:

Homer Plessy, “a [non-white train] passenger between two stations within . . . Louisiana,” was arrested and charged pursuant to a state statute requiring “separate railway carriages for the white and colored races.” *Plessy v. Ferguson*, 163 U.S. 537, 540-541 (1896). The Supreme Court “reduce[d]” the case “to the question [of] whether the statute of Louisiana [wa]s a reasonable regulation” of the U.S. Constitution. *Id.*, at 550. Even in light of the 14th Amendment, which prevents the States from abridging the privileges and immunities of all citizens, the Court could not find that a state “law which authorize[d] or even require[d] the separation of the two races in public conveyances [wa]s unreasonable.” *Id.*, at 550-551. Alone in his dissent, Justice Harlan put forth the idea of color-blind constitutionalism, which inspired future civil rights activists, including Thurgood Marshall.¹ Marshall would even “read it aloud for inspiration as he prepared to argue *Brown* . . .” before the Supreme Court. *Id.*, at 126. Effectively, *Plessy* “sanctioned the second-class status of blacks.”²

Relevant Definitions:

civil disobedience: (1866) a deliberate but nonviolent act of lawbreaking to call attention to a particular law or set of laws believed by the actor to be of questionable legitimacy or morality³

equality: from the Latin word *aequus* which means “even, level.” Today, the word means: “[t]he state of enjoying legal rights.”

public accommodation: (1762) 1. The provision of lodging, food, entertainment, or other services to the public; esp. (as defined by the Civil Rights Act of 1964), one that affects interstate commerce or is supported by state action. 2. A business that provides such amenities to people in general.⁴

segregation: from the Latin word *segregare* which means “to separate from the flock.”

¹ Jeffrey Rosen, *The Supreme Court: The Personalities and Rivalries That Defined America* 125-126 (1st ed. 2007).

² United States Commission on Civil Rights, *Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools* 2 (1st ed. 1976).

³ Civil Disobedience Definition, *Black's Law Dictionary* (11th ed. 2019).

⁴ Accommodation Definition, *Black's Law Dictionary* (11th ed. 2019).

writ of error: (15c) 1. A writ issued by an appellate court directing a lower court to deliver the record in the case for review.⁵

writ of prohibition: 2. An extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a non-judicial officer or entity from exercising a power. Also termed (in sense 2) *writ of prohibition*.⁶

Factual Background:

In 1892, Homer Plessy was arrested and charged with violating Louisiana Act No. 111, also known as the Separate Car Act. He entered and refused to leave a train compartment assigned only for white passengers. When he was arraigned, Plessy challenged the criminal court's jurisdiction, saying that Act No. 111 was null and void because it conflicted with the U.S. Constitution. After that case concluded, Plessy and his legal counsel applied to the state supreme court for a Writ of Prohibition and Certiorari; the court denied this application. Plessy filed a petition for re-hearing, setting forth errors in the opinion denying his application; that petition was refused. Subsequently, Plessy filed a petition for a Writ of Error to the U. S. Supreme Court, which was allowed.⁷

Important Laws and Cases:

U. S. Const. amend. XIII (abolishes slavery and involuntary servitude, except as criminal punishment).

U. S. Const. amend. XIV (guarantees equal protection and citizenship under the law and protects all citizens' privileges and immunities).

Slaughter-House Cases, 83 U.S. 36 (1873) (defining what the abolition of slavery meant practically and what the term "servitude" meant under the 13th Amendment).

The Civil Rights Cases, 109 U.S. 3 (1883) (finding that refusing public accommodation to individuals due to race was an act outside state power; it was an act by mere individuals, causing a civil injury).

Legal Issues:

1. Does the 13th Amendment prohibit segregation in public life?
2. Does the 14th Amendment only establish legal equality? Does it prohibit racial separation socially?
3. Does one's "reputation" for being part of a politically or socially advantaged race create a property interest? Does one's reputation have a monetary value?

⁵ Writ of Error Definition, *Black's Law Dictionary* (11th ed. 2019).

⁶ Prohibition Definition, *Black's Law Dictionary* (11th ed. 2019).

⁷ *Plessy v. Ferguson*, 163 U.S. 537 (1896), available at <https://link.gale.com/apps/doc/DW0104076817/SCRB?u=sant29582&sid=bookmark-SCRB&xid=294529d7&pg=1>.

4. Is racial separation on public transport a reasonable exercise of state police power?

Analysis:

Relying on *The Civil Rights Cases*, the majority of the Justices in this case concluded that Plessy could not establish a 13th Amendment claim regarding a situation or state of involuntary servitude. The majority also decided that the 13th Amendment was not even at play in this case, relying mainly on *Slaughter-House Cases*.

Addressing the 14th Amendment argument, the majority again referenced the *Slaughter-House Cases*. In their view, this precedent required absolute legal equality of the races; however, that was very different matter from social equality. Thus, the majority found that racial separation was not hostile to legal equality under the 14th Amendment.

Plessy raised the issue of whether there is a property right in reputation, specifically the reputation for belonging to an advantaged race. While the majority conceded that reputation is a property right, they stated that Plessy did not have the right to take action against a company for depriving him of property because he was only lawfully entitled to the reputation of a black man.

Another major issue the majority addressed was the exercise of state police power. They stated that it had to be reasonable, but gave discretion to the states for a variety of reasons, including public comfort. Ultimately, although this exact phrase does not appear until Harlan's dissent, the majority finds that "separate but equal" public accommodations are constitutional.

In his dissent, Harlan outlined Act No. 111 and pointed out that railroad managers could not decide to apply it. The law's only exception was for non-white nurses attending to white children. Harlan cited prior cases, which ruled that a railroad was a public highway under the law, and concluded that race should not be a barrier to using the railroad. Harlan detailed the 13th, 14th, and 15th Amendments, noting that previous Supreme Court decisions protected non-white citizens' rights under these Amendments from state limitations.

Although the majority claimed that Act No. 111 was race-neutral, Harlan pointed out that no reasonable observer could conclude that. He also argued that by allowing a state law that forbade white and black citizens from riding in the same train car to stand, the Court had affected both groups' personal liberties. Further, Harlan stated that eventually, this case would be seen as wrongly decided.

Discussion Questions:

1. Does segregation violate the 13th and/or 14th Amendments? Why or why not?
2. Do you think your reputation could be a "property interest?" Meaning, could you sue someone for damaging it?
3. Should Louisiana have been able to separate races on public transport? Should a state be able to separate people on public transport for other reasons? Why or why not?

4. What is the difference between legal and social equality?
5. Why do you think Harlan thought that no one could conclude Act No. 111 was race-neutral? Why do you think Harlan thought that *Plessy* would be seen as wrongly decided?
6. How do you think this case affected other court decisions? What about the lives of white and non-white Americans?
7. “Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences[.]” *Plessy*, at 551. The conductor did not know Plessy was “colored” until he asked. How did the Justices address people of mixed and/or ambiguous ancestry?
8. The majority wrote that “[i]f one race [is] inferior to the other socially, the [C]onstitution of the United States cannot put them upon the same plane.” *Id.*, at 551-552. How does this language compare to the 14th Amendment?
9. Act No. 111 said it was “for the comfort of passengers on railway trains.” How did it guarantee Plessy’s comfort? If everyone was comfortable with segregated trains, then why did Louisiana have to pass a law to require it? Have you ever been instructed to do something that you were already doing and that you enjoyed?

Aftermath of *Plessy*: Race Segregation in New Mexico

After *Plessy*, but before the 1954 decision in *Brown v. Board of Education*, “separate but equal” was the law of the land. In New Mexico, there were segregated schools for people of African descent in Roswell, Artesia, Carlsbad, Hobbs, Tucumcari, Clovis, Las Cruces, Vado, Lovington, and Alamogordo. On August 30, 1954, Hobbs became the last public school to desegregate in the State of New Mexico. See [Evening star August 27, 1954, Page B-11, Image 44](#).

Charles Becknell, an author, pastor, activist, and educator, wrote this about his experience as a black child in Hobbs in the 1940s:

There is nothing wrong with being different, however, I grew up with the assumption that to be black and different was to be inferior. I also grew up believing that to be black was a badge of dishonor and that equaled second-class citizenship. Second-class citizenship meant that you were to say *Yes sir* and *No sir* to white males, regardless of their age. Another rule that I learned at an early age was that blacks had to remove their cap or hat in the presence of a white person. Black men and boys, regardless of age, were frequently referred to as *boy*. (Facial hair on a black male was unacceptable because hair was symbolic of masculinity). It was told to us that in some areas of the South, facial hair could get a black man lynched.

Charles E. Becknell Sr., *No challenge – No change (Growing Up Black in New Mexico)* 23 (1st ed. 2003).